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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 Timothy Jackson Seeley

11 Plaintiff,

No. CIV S-04-1800 DFL CMK P

12
13 vs.

14 Teresa A. Schwartz, et al.,

15 Defendants.

16 _____/ ORDER

17 Plaintiff, Timothy Seeley, is a state prisoner proceeding pro se and informa
18 pauperis. He brings this action under 42 U.S.C. § 1983, alleging a violation of his Free Exercise
19 rights under the First and Fourteenth Amendments, a violation of his rights under the Religious
20 Land Use and Institutionalized Persons Act, 42 U.S.C. § 1997cc, and a violation of his rights
21 under the American Indian Religious Freedom Act, 42 U.S.C. § 1996. The following motions
22 are pending before the court: defendants' motion to dismiss (doc. 38); plaintiff's motion to file an
23 amended complaint or, in the alternative, to voluntarily dismiss the complaint (doc. 58); two
24 motions by plaintiff seeking an extension of time to "respond to the Attorney Generals [sic]
25 Motion(s)" (doc. 60, 62) and; defendants' request to vacate the discovery cut-off date or to vacate
26 the entire scheduling order (doc. 65).

1 In his August 15, 2005 motion seeking either to amend his complaint or be
2 granted a voluntary dismissal, plaintiff states that he needs to “specifically state each and every
3 claim upon which relief can be granted, which include new Native American Religious Rights
4 being violated...” and that he needs to attach exhibits to his complaint to “show the Court with
5 previous and new exhibit documents that plaintiff has in fact ‘Exhausted Administrative
6 Remedies.’” (Mot. to Amend, pg 2.) Plaintiff’s motion to amend was not accompanied by a
7 proposed amended complaint. As a litigant proceeding in forma pauperis, plaintiff’s pleadings
8 are subject to evaluation by this court pursuant to the in forma pauperis statute. See 28 U.S.C.
9 § 1915. Since plaintiff did not submit a proposed amended complaint, the court is unable to
10 evaluate it. Plaintiff’s motion for leave to amend must therefore be denied.

11 The court notes that plaintiff states in his August 15, 2005 motion to amend that
12 he did not attach evidence to his amended complaint filed March 10, 2005. He indicates that this
13 is due to the court’s denial of his February 10, 2005 motion to file an amended complaint due to
14 the complaint being vague and rambling and 143 pages long. Plaintiff is advised that, should he
15 file another motion to amend his complaint, he is free to file necessary exhibits with his
16 complaint. However, he is cautioned that any amended complaint must contain a short and
17 concise plea for relief, such that the court and defendants are readily able to ascertain plaintiff’s
18 claims and he is cautioned that any evidence attached must be relevant to the claims in his
19 complaint.

20 As it is obvious from plaintiffs’ filing that he seeks to voluntarily dismiss his
21 complaint in order to immediately file a new complaint alleging the same violations against the
22 same defendants, it is not in the interest of judicial economy to grant a voluntary dismissal.
23 Plaintiff’s request for voluntary dismissal is denied.

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1 Plaintiff has also filed two motions for an extension of time to respond the
2 “Attorney Generals [sic] Motions.” The court assumes that the motion to which plaintiff is
3 referring is defendants’ June 10, 2005 motion to dismiss. However, the court notes that plaintiff
4 filed a “Response in Opposition to Defendant’s [sic] Motion to Dismiss CC-II Cry as a
5 Defendant” on August 22, 2005. Plaintiff is advised that the court will consider his August 22,
6 2005 response in opposition to defendants’ motion to dismiss. To the extent that plaintiff is
7 seeking to file a more detailed opposition to defendants’ motion, he is granted an extension of
8 time of thirty days from the date of service of this order to file such.

9 Finally, the court considers defendants’ request to vacate the discovery cut-off
10 date and the scheduling order. Good cause appearing, the court vacates the Scheduling Order
11 issued on June 13, 2005. The court will issue a new scheduling order once it has ruled on the
12 defendants’ pending motion to dismiss. The court notes that the protective order staying
13 discovery pending the court’s ruling on defendants’ motion to dismiss (doc. 54) is still in effect.

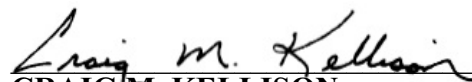
14 IT IS ORDERED THAT:

- 15 1. Plaintiff’s motion for leave to amend his complaint is denied (doc. 58);
16 2. Plaintiff’s request for voluntary dismissal is denied (doc 58);
17 3. Plaintiff’s requests for an extension of time are granted. (Docs. 60, 62.)

18 Plaintiff is granted thirty days form the date of service of this order to file a response to
19 defendants’ June 10, 2005 motion to dismiss and;

20 4. Defendants’ request to vacate the scheduling order is granted. (Doc. 65.) The
21 Scheduling Order issued on June 13, 2005 is vacated. The court will issue a new scheduling
22 order once it has ruled on defendants’ motion to dismiss this action as to defendant Cry.

23 DATED: October 5, 2005.

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26 **CRAIG M. KELLISON**
UNITED STATES MAGISTRATE JUDGE